

STATE OF SOUTH CAROLINA

(Caption of Case)

Application of Broadview Networks, Inc. for a
Certificate of Public Convenience and Necessity to
Provide Resold and Facilities-Based Local Exchange
Telecommunications Services in the State of South
Carolina and for Flexible Regulation

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2009 - 452 - C

(Please type or print)

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DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)			
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request	
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification	
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation	
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement	
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment	
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter	
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response	
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery	
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition	
<input checked="" type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation	
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena	
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff	
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input checked="" type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____	
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest		
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit		
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report		

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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-452-C - ORDER NO. 2010-
FEBRUARY __, 2010

IN RE: Application of Broadview Networks, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities- Based Local Exchange Telecommunications Services in the State of South Carolina, and for Flexible Regulation) ORDER GRANTING) REQUEST FOR) EXPEDITED REVIEW) AND APPLICATION FOR) AUTHORITY TO) PROVIDE LOCAL) EXCHANGE SERVICES
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This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Broadview Networks, Inc. (“Broadview” or “the Company”) requesting the authority to provide resold local exchange service in South Carolina. The Commission has previously granted Broadview authority to provide intrastate interexchange telecommunications services within the State of South Carolina in Docket No. 2007-413-C. By this Application, the Company plans to offer local exchange services to South Carolina customers on a resold basis.

Further, Broadview requests that the Commission regulate its local telecommunications services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C.

The Application of Broadview was filed pursuant to S.C. Code Ann. Section 58-9-280, and the Rules and Regulations of the Commission.

The Commission's Docketing Department instructed Broadview to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC") on November 25, 2009.

On December 7, 2009, counsel for the SCTC filed with the Commission an executed Stipulation in which Broadview stipulated that it would seek authority only in non-rural local exchange carrier ("LEC") service areas of South Carolina and not provide any local service to any customer located in a rural incumbent's service area, unless and until Broadview provided written notice of its intent prior to the date of the intended service. Broadview also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Broadview agreed to abide by all State and Federal laws and to participate to the extent that Broadview may be required to do so by the Commission to support universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of statewide Certificates of Public Convenience and Necessity to Broadview provided the conditions contained in the Stipulation are met.

On December 2, 2009, Broadview provided the Commission with the Verified Testimony of Charles C. Hunter, Broadview's Executive Vice President and General Counsel, and evidence that the Company possesses the financial, operational, and managerial resources required to provide high quality local exchange telecommunications services at competitive rates, terms and conditions.

Broadview entered into a Settlement Agreement with the Office of Regulatory Staff (“ORS”), which was filed with the Commission on December 23, 2009, whereby the Applicant has agreed to make the tariff changes proposed by the ORS. On December 23, 2009, Broadview subsequently filed a Request for Expedited Review.

FINDINGS OF FACT

1. Broadview is organized as a corporation under the laws of the State of New York and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State. The Company’s corporate headquarters are located in Rye Brook, New York.

2. Broadview was authorized to operate as a provider of interexchange telecommunications by this Commission in Docket No. 2007-413-C and now wishes to expand its services to include local exchange services.

3. The Commission finds that Broadview possesses the necessary experience, capability, and financial resources to provide local exchange telecommunications in South Carolina. S.C. Code Ann. Section 58-9-280(B)(1).

4. The Commission finds that Broadview will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280(B)(4).

5. The Commission further finds that Broadview will provide communications services that will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280(B)(2).

6. The Commission finds that the provision of local exchange service by Broadview “does not otherwise adversely impact the public interest.” S.C. Code Ann. Section 58-9-280(B)(5).

7. Following Broadview’s execution of a Stipulation with the SCTC, the SCTC withdrew its opposition to the Application. No further protests or Motions for Intervention were filed in this matter. By Broadview’s Request for Expedited Review, the Applicant has waived its right to a formal hearing under S. C. Code Ann. Sec. 58-9-280.

CONCLUSIONS OF LAW

1. The Commission concludes that Broadview possesses the managerial, technical, and financial resources to provide the competitive local exchange telecommunications services as described in its Application.

2. The Commission concludes that Broadview’s “provision of service will not adversely impact the availability of affordable local exchange service.”

3. The Commission concludes that Broadview will participate in the support of universally available telephone service at affordable rates to the extent that Broadview may be required to do so by the Commission.

4. The Commission concludes that Broadview will provide services that will meet the service standards of the Commission.

5. The Commission concludes that the provision of local exchange service by Broadview will not otherwise adversely impact the public interest.

6. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Broadview to provide competitive intrastate local exchange services only to customers located in the non-rural areas of the state. The terms of the Stipulation between Broadview and SCTC are approved, and adopted as a part of this Order. Therefore, any proposal to provide local telecommunications service to rural service areas is subject to the terms of the Stipulation.

7. The Settlement Agreement reached between ORS and Broadview is approved and is also adopted as part of this Order. Broadview has agreed to make the tariff changes proposed by the ORS.

8. The Commission concludes Broadview's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for Broadview's competitive local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, Broadview's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. Broadview's Request for Expedited Review is granted on the basis of the facts as stated in this Order and on the basis that Broadview has previously been found fit to provide telecommunications services in South Carolina (See Order No. 2008-439) and the instant Application seeks merely to expand that authority to include local exchange services.

2. A Certificate of Public Convenience and Necessity is granted to Broadview to provide competitive local exchange telecommunications services via resale.

3. The terms of the Stipulation between Broadview and the SCTC are approved and adopted as a part of this Order. The Stipulation is attached as Order Exhibit 1. Any proposal to provide competitive local exchange telecommunications services to rural service areas is subject to the terms of this Stipulation.

4. Broadview shall file, prior to offering local exchange services in South Carolina, an electronic version of its local service tariff with the Commission and ORS within 30 days of receipt of this Order.

5. Broadview shall be required to comply with Title 23, Chapter 47, South Carolina Code of Laws Annotated which governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Broadview to contact the appropriate authorities regarding 911 service in

the counties and cities where Broadview will be operating. Contact with the appropriate 911 service authorities is to be made before providing voice or dial tone telephone service in South Carolina. Accompanying this Order is a memo from the State 911 Office of Research & Statistics of the South Carolina Budget and Control Board. This memo provides information about contacting County 911 Coordinators. By this Order and prior to providing voice or dial-tone services in South Carolina, Broadview is directed to contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

6. If it has not already done so by the date of issuance of this Order, Broadview shall file its revised tariff utilizing the Commission's e-filing system for tariffs. The revised tariff should be electronically filed in a text searchable PDF format using the Commission's DMS System (<http://dms.psc.sc.gov>). An additional copy should be sent via email to etariff@psc.sc.gov to be included in the Commission's ETariff System (<http://etariff.psc.sc.gov>). Future revisions to the tariff should be made using the ETariff System. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

7. Broadview is required to file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of South Carolina specific information. Therefore, Broadview shall keep financial records on its South Carolina operations to comply with the annual report and a gross receipts report. The proper form

for filing annual financial information can be found on the Commission's website or at the ORS's website at www.regulatorystaff.sc.gov. The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Applicant to file annual financial information as directed by the Commission or ORS and shall be filed no later than April 1st.

Commission gross receipts forms are due to be filed no later than August 31st of each year. The proper form for filing gross receipts information can be found at the ORS website www.regulatorystaff.sc.gov and the appropriate form is entitled "Gross Receipts Form."

Each telecommunications company certified in South Carolina is required to file annually with the ORS the South Carolina Universal Service Fund Contribution ("USF") worksheet, which may be found on the ORS's website at www.regulatorystaff.sc.gov. This worksheet provides ORS information required to determine each telecommunications company's liability to the State USF fund. The State USF worksheet is due to be filed annually no later than July 1st with the ORS.

8. Broadview shall conduct its business in compliance with Commission decisions and Orders, both past and future.

9. By its Application, Broadview requested a waiver of 26 S.C. Code Ann. Regs. 103-610 requiring the Company to maintain its financial books and records within the State of South Carolina. However, as a condition of being granted a waiver of the requirement to maintain corporate books and records within the State of South Carolina, Broadview is authorized to maintain its books and records at its principal place of

business, and Broadview shall make such books and records available, at the Company's expense, to the Commission staff or the Office of Regulatory Staff upon request. The Company is directed to comply with all Rules and Regulations of the Commission, unless the Commission specifically waives compliance with a regulation.

10. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Elizabeth B. Fleming, Chairman

ATTEST:

John E. Howard, Vice Chairman

(SEAL)